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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HAQ, NAEEM U

ART UNIT PAPER NUMBER

3625

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/712,935

Applicant(s)

XIE ET AL.

Examiner

Naeem Haq

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ML

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This action is in response to the Applicants' amendment A, paper number 5, filed on February 5, 2004. New claims 16-22 have been added. Claims 1-22 are pending and will be considered for examination.

Applicants' amendment is sufficient to overcome the objection to the drawings and specification. Therefore these objections are hereby withdrawn.

### ***Final Rejection***

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (US Patent 5,835,896) in view of Official Notice.**

Referring to claims 1, 4, 9, 12, and 15, Fisher teaches a system, method, and a computer program for conducting an on-line auction comprising: receiving at least one proxy bid from at least one proxy bidder (column 9, lines 18-35; column 12, line 63 – column 13, line 24); sorting the at least one proxy bid in a descending order (column 9, lines 18-35; Figure 2); determining at least one winner of the on-line auction (column 6, lines 4-13; column 7, lines 1-7; column 10, lines 40-62; column 13, lines 25-54); generating a winning sale price (column 10, lines 29-39). Fisher does not explicitly

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disclose that the sorting is based upon a limit price for the proxy bid, or that the winning sale price is generated by determining a highest bid by the at least one proxy bidder not allocated any of a total quantity of goods, and incrementing the highest bid by the at least one proxy bidder not allocated any of the total quantity of goods, by a predetermined increment level. However, at the time the invention was made, it would have been obvious to one of ordinary skill in the art to do so. Applicant has not disclosed that sorting the bids based upon the limit price or generating a winning price by incrementing the highest bid by a bidder not allocated any goods by a predetermined increment level solves a stated problem or is used for a particular purpose.

Furthermore, one of ordinary skill in the art would have expected Applicants' invention to perform equally well with sorting based on the proxy bids and generating a winning price as disclosed by Fisher because both eventually lead to the same final price without exceeding the winning bidder's limit price. Therefore, it would have been obvious to one of ordinary skill in this art to modify the Fisher reference to obtain the invention as specified in the claims.

Referring to claims 2, 10, and 13, Fisher teaches determining a total quantity of goods for sale (Figure 2); determining a quantity of goods requested by each of the at least one proxy bidder (Figure 3). Fisher does not explicitly teach allocating a portion of the total quantity of goods for sale to each of the at least one proxy bidders based upon the quantity of goods requested by each of the at least one proxy bidder until all of the total quantity of goods is allocated, the total quantity of goods for sale being allocated to the at least one proxy bidder in descending order. However, Fisher teaches that a user

is allowed to select the quantity of goods desired (Figure 2). Fisher also teaches notifying a user that the selected quantity may not be available (Figure 2). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to allocate the goods to bidders in descending order. One of ordinary skill in the art would have been motivated to do so in order to maximize the sales revenue for the seller.

Referring to claims 3, 5, 7, 8, 11, 14, Fisher teaches generating the winning sale price using the method listed (column 9, lines 18-35). Fisher also teaches that at least one proxy bidder declines the allocated goods (Figure 2), and that the predetermined increment level is a monetary unit (column 9, lines 18-35). Fisher does not teach that the increment unit is one dollar. However, Fisher teaches incrementing the bid while allowing the bidder to purchase the product at the "lowest possible price" (column 9, lines 18-35). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an increment of one dollar in the system and method of Fisher. One of ordinary skill in the art would have been motivated to do so in order to use a convenient and well-known monetary unit to allow the bidder to obtain the product at the "lowest possible price."

Referring to claim 6, Fisher does not teach allocating a portion of the total quantity of goods to a highest losing bidder, and generating a sale price for the highest losing bidder that is equivalent to a proxy bid submitted by the highest losing bidder. However, Official Notice is taken that it is old and well known in the art for a merchant to dispose of goods at various prices submitted by potential buyers. Therefore it would

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have been obvious to one of ordinary skill in the art, at the time the invention was made, to have the system and method of Fisher allocate a portion of the goods to various bidders at various prices. One of ordinary skill in the art would have been motivated to do so in order to allow a seller to sell as many goods as possible while maximizing revenue.

Referring to claims 16, 20, and 22, Fisher teaches determining if a last winner accepts a remaining portion of the total quantity of goods that is less than a bid quantity submitted in a last winner proxy bid of the last winner; and generating a last winner sale price for the last winner that is equivalent to a bid price submitted in the last winner proxy bid (column 10, lines 6-28).

Referring to claim 17, Fisher does not teach that if the last winner does not accept a portion of the quantity of goods less than the bid quantity then determining if a highest losing bidder accepts the remaining portion of the total quantity of goods; and generating a highest loser sale price for the highest losing bidder that is equivalent to a bid price submitted by the highest loser. However, Fisher teaches that if a bid is below a minimum bid then the bid is marked as unsuccessful (i.e. the bid is a losing bid). Furthermore, Fisher teaches that his system awards the merchandise to top bidders in order to generate the most profit for the sellers. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to do offer any remaining excess inventory of the merchandise to bidders whose bids were marked as unsuccessful once all of the top bidders were satisfied. One of ordinary skill in the art

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would have been motivated to do so in order to convert any remaining inventory into sales for the sellers.

Referring to claims 18 and 19, Fisher does not explicitly teach that the winning sale price differs from the last winner/highest loser by a whole number multiple of the predetermined increment level. However, Fisher teaches that the predetermined increment level is a whole number (Figure 2). Furthermore, Fisher teaches that the auction continues until a winner is determined (column 9, lines 18-35). Therefore it is inherent in the method of Fisher for the winning sale price to be some whole number multiple of the last winner/highest loser sale price since the bids can only be increased by an increment level which itself is a whole number.

Referring to claims 21 and 23, Fisher teaches a multi-person auction. Therefore if there are only two bidders in the system and method of Fisher then the limitations of these claims are inherent in Fisher since the winner will pay the winning bid price and the last winner will pay the last winner sale price (Figure 9).

### ***Response to Arguments***

Since the Applicants have failed to seasonably challenge the Examiner's Official Notice presented in the previous Office Actions, the Examiner now interprets all Official Notices as admitted prior art. *Applicant must seasonably challenge well known statements and statements based on personal knowledge when they are made. In re Selmi, 156 F.2d 96, 70 USPQ 197 (CCPA 1946). If Applicant does not seasonably traverse the well known statement during examination, then the object of the well known*

*statement is taken to be admitted prior art. In re Chevenard, 139 F.2d71, 60 USPQ 239 (CCPA 1943). Also see MPEP 2144.03.*

Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naeem Haq whose telephone number is (703)-305-3930. The examiner can normally be reached on M-F 8:00am-5:00pm.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff A. Smith can be reached on (703)-308-3588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Naeem Haq**, Patent Examiner  
Art Unit 3625

April 21, 2004



Jeffrey A. Smith  
Primary Examiner